IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7261 OF 2006

Venugopal Nair & Ors. .. Petitioners

V/s

M/s Maharashtra State Electricity Distribution Company Ltd. & ors. .. Respondents

Mr.Suneet Moholkar i/b Ms.Jaya Nair for the petitioners.

Ms.A.R.S. Baxi for respondents no.1 to 3.

CORAM : S.B. MHASE &
D.G. KARNIK, JJ.

DATE : 27TH SEPTEMBER 2007

P.C. :

1. Heard counsel for the parties.

2. By this petition, the petitioners claim mandamus directing the respondent no.1 to pay to the petitioners compensation in the sum of Rs.48,90,000/-.

3. The petitioners no.1 and 2 are parents and the petitioner no.3 is the brother of Miss Hema Nair (hereinafter referred to as "the deceased") who was electrocuted. The respondent no.1 who is an electric supply company. According to the petitioners, the deceased was electrocuted on account of the negligence

of the respondent no.1 and, therefore, the petitioners are entitled to compensation.

4. Respondent no.1 has filed an affidavit in reply denying the liability. It has firstly contended that the electric pole was situated on the divider line of the road and the no person is allowed to cross the road at that point. Barricade is erected to prevent road crossing at that point. The deceased tried to cross the road through the gap between the electric pole and the barricade. This was unauthorised and the deceased herself was negligent in touching the electric pole. The death was caused due to negligence of the deceased herself and in any event there was a contributory negligence on her part.

5. Respondent no.1 has further contended that on the day of the incident there was heavy rain and due to water logging, the electric current might have entered the electric pole. There was no negligence on the part of the respondent no.1. The accident was an act of God. In any event, there was a contributory negligence on the part of the deceased. The respondent no.1 also denied the income of the deceased and has claimed that the amount of compensation of Rs.48,90,000/- was not only excessive but grossly exorbitant.

6. Except admitting that the deceased died due to electrocution, the respondent no.1 has denied all the relevant facts. It has denied negligence on its part. It has also alleged contributory negligence on the part of the deceased and has also contended that the amount of compensation claimed is excessive and exorbitant. Counsel for the respondent no.1 admitted that it has paid a sum of Rs.1,10,000/- to the petitioners as compensation as per its policy, without admitting any liability to pay.

7. In **Chairman, Grid Corporation of Orissa Ltd. v. Sukamani Das, reported in (1999) 7 SCC 298**, the Supreme Court in similar facts, where a person died due to electrocution, has held that the question about compensation and the amount thereof could not have been decided on the basis of affidavit. It has also held that it is a settled position of law that where disputed questions of facts are involved, petition under Article 226 of the Constitution is not a proper remedy. Holding that the High Court should not have decided the disputed questions of facts, the Supreme Court set aside the decision of the High Court awarding compensation. In our view, the present case is clearly covered by the ration of this decision. Learned counsel for the petitioner, however, submitted that the aforementioned decision has been distinguished in the later decisions

of the Supreme Court rendered in **H.S.E.B. v. Ram Nath, reported in 2005 ACJ 342** and **T.N. Electricity Board v. Sumathi, reported in (2000) 4 SCC 543**.

8. In T.N. Electricity Board v. Sumathi (supra), the Supreme Court held that it cannot be understood as laying a law that in every case of tortious liability recourse must be had to a suit. When there is negligence on the face of it and it amounts to infringement of Article 21 of the Constitution, the High Court can entertain a writ under Article 226 of the Constitution. Where negligence is admitted and there is no dispute to the amount of compensation, the High Court can entertain a writ where infringement of Article 21 is alleged even though the case involves tortious liability. However, in the present case, the facts are disputed, negligence is denied. There is allegation of contributory negligence. Photographs of the spot of accident show that the pole, where the deceased was electrocuted, was situated on the divider line of the road and the divider was protected by a barricade preventing pedestrian from crossing the road. Yet the deceased in her attempt to cross the road from the prevented area appears to have touched the pole. In the circumstances, the allegation of contributory negligence is required to be adjudicated at trial. Similarly, the quantum of liability is also seriously disputed.

Learned counsel for the petitioners submitted that the income of the deceased was Rs.1,15,000/- per year. What would be the appropriate multiplier taking into consideration that the deceased was an unmarried daughter of marriagable age is a question of fact which would be required to be decided at a trial in a suit. In the circumstances, the present case is clearly governed by the earlier decision rendered in Grid Corporation of Orissa Ltd. v. Sukamani Das (supra) and is not similar to the case in T.N. Electricity Board v. Sumathi (supra).

9. In H.S.E.B. v. Ram Nath (supra) also, the Supreme Court clearly held that where the averments are disputed and the question of liability is a disputed question of fact, writ petition would not be an appropriate remedy. In the present case, we find that the dispute raised by the respondent no.1 regarding liability and the quantum thereof is a bona fide dispute and is not raised only for the sake of denial. In the circumstances, we cannot entertain the writ petition and determine the liability and quantum thereof.

10. For these reasons, the writ petition is rejected. It would be open to the petitioners to pursue their claim by filing appropriate legal proceedings.

(D.G. KARNIK, J.) (S.B. MHASE, J.)